

**AGREEMENT
BETWEEN THE BURLINGTON ELECTRIC DEPARTMENT
AND THE VERMONT ENERGY INVESTMENT CORPORATION
FOR ENERGY EFFICIENCY UTILITY CORE PROGRAM SERVICES**

Agreement made this 1st day of January 2004, by and between the City of Burlington, Vermont, a municipal corporation organized and existing under the laws of the State of Vermont, acting by and through its Electric Department (B.E.D.), and Vermont Energy Investment Corporation (VEIC) of 255 South Champlain Street, Burlington; located in Chittenden County, and State of Vermont.

WITNESSETH

WHEREAS, in its Order of September 30, 1999, in Docket 5980, the Public Service Board ("P.S.B." or "Board") approved a set of statewide programs for the delivery of energy efficiency services in Vermont. As part of that Order the Board approved a Bilateral Agreement Between the Department of Public Service (D.P.S.) and the City of Burlington Electric Department ("B.E.D.") ("B.E.D. Bilateral"). The B.E.D. Bilateral provides that the D.P.S. agrees to make a presumption that B.E.D. should have the right to implement the Core Programs in its service territory, subject to D.P.S. and Board review of a B.E.D. proposal.

WHEREAS, the D.P.S. and P.S.B. approved B.E.D.'s proposal, B.E.D. will deliver the following Energy Efficiency Utility (EEU) Core Market Services and Initiatives in Burlington: **Business Energy Services includes:** Existing Buildings- Retrofit, Existing Buildings- Market Opportunities, Commercial and Industrial New Construction, MultiFamily- Low Income, and MultiFamily – New Construction. **Residential Energy Services includes:** Residential New Construction- Single Family, Existing Homes- Low Income Single Family, Existing Homes- non- Low Income Single Family and Efficient Products.

WHEREAS, the P.S.B. entered into a contract, dated 10/31/02, with VEIC to fulfill the responsibilities of a statewide Energy Efficiency Utility specified in the Board's Order in Docket

5980 for the period of January 1, 2003 through December 31, 2005.

WHEREAS, VEIC's contract with the Board stipulates coordination with B.E.D. regarding their delivery of Core Programs in accordance with the terms of the B.E.D. Bilateral and any subsequent Board order in Docket 5980 approving B.E.D.'s implementation plan.

WHEREAS, B.E.D. envisions a high level of cooperation and coordination between B.E.D. and VEIC in order to maximize Core Program benefits and to assure that the above Core Programs are properly and consistently implemented within Burlington.

WHEREAS, B.E.D. acknowledges that VEIC will incur costs for general coordination with B.E.D., as well as other standard program costs and anticipates paying a monthly charge to compensate VEIC for these costs based upon a mutually agreed upon cost-sharing arrangement. The cost-sharing formula is attached to this Agreement as ATTACHMENT A (2004).

NOW THEREFORE, in consideration of the promises and covenants recited herein, the parties agree as follows:

1. SCOPE OF SERVICES

- 1.1 B.E.D. acknowledges that some of the statewide activities that VEIC carries out through VEIC's fulfillment of the EEU contract with the P.S.B., and as described in ATTACHMENT B, will efficiently fulfill certain B.E.D. needs and obligations related to the implementation of Core EEU programs in Burlington. B.E.D. acknowledges that VEIC will incur costs associated with these activities that benefit B.E.D.'s implementation of EEU Core programs. B.E.D. agrees to fairly compensate VEIC for services outlined in ATTACHMENT B under this Contract.

VEIC agrees to the following:

1. To make a good faith effort to provide adequate notices inviting BED staff to assist with planning and to attend upcoming customer or staff training programs, vendor presentations, or other special events.
2. To provide a pro-rata share of core program marketing and business development materials (including forms, coupons, brochures, folders, newsletters, fact sheets, etc...) for use by BED staff.
3. To allocate a pro-rata share of customer/project case studies developed during the contract term. BED and VEIC will collaborate on case study development with VEIC responsible for production and printing.
4. To make a good faith effort to notify BED of various spreadsheet analysis tools as developed by VEIC, and to provide said tools upon BED request.
5. To provide BED with regular updates of the Technical Resource Manual as they occur.
6. To make a good faith effort to notify BED of any significant program development, planning or implementation changes and to invite BED staff participation in discussions of said program changes.

2. VEIC - B.E.D. RELATIONSHIP

- 2.1 Nothing in this Agreement shall create any contractual relationship between B.E.D. and any of VEIC's, subcontractors, employees, or other persons or organizations having a direct or indirect contract with VEIC. Nor shall this Agreement create any obligation on the part of B.E.D. to pay, or to see to the payment of, any monies due any subcontractor, employee, or other person or organization having a direct or indirect contract with VEIC. B.E.D. shall not furnish to any such subcontractor, employee, or other person or organization evidence of amounts paid to VEIC on account of specific work done unless law requires such disclosure.

3. PAYMENT

- 3.1 Payments made under this Agreement will not exceed \$167,492.00. VEIC is to be paid for its services monthly by submitting an invoice that is based on actual monthly VEIC Core Program expenditures and applied to the agreed B.E.D. cost basis and B.E.D. percentage share numbers indicated on ATTACHMENT A (2004), "B.E.D.'s Allocated Share for Core Program Services.

4. PAYMENT SCHEDULE

- 4.1 Payment for fees incurred shall be monthly according to "TERMS OF PAYMENT" outlined in B.E.D. Purchase Order. Invoices should be submitted to: Ginny Thiels, Energy Services Administrator, B.E.D., 585 Pine Street, Burlington, Vermont 05401.

5. TERMINATION

- 5.1 Termination by either party is subject to the following conditions:
- a. After 15 days from delivery of written notice to VEIC, B.E.D. may, without cause and without prejudice to any other right or remedy, elect to terminate the contract. In such case, VEIC shall be paid for all work satisfactorily executed to date of termination.
 - b. After 15 days from delivery of written notice to B.E.D., VEIC may terminate this agreement. Upon Termination, VEIC will be paid for satisfactorily completed work up to date of termination. Any work not completed at date of termination will not be paid for unless, in its sole discretion, B.E.D. determines that it will be able to utilize the work in its completion of the project.

6. TERM

- 6.1 The term of this Agreement shall begin on January 1, 2004 and will remain in full force and effect until December 31, 2004 or terminated by either party as is described in Section 5.

7. DISPUTES

- 7.1 In the event of a dispute the parties agree that such dispute will be brought to the E.E.U. Contract Administrator under contract to the PSB for resolution. The parties further agree that if the dispute cannot be resolved by the Contract Administrator, it will be brought to the P.S.B. for resolution.

8. INSURANCE

- 8.1 Contractor shall purchase and maintain insurance coverage for not less than the following limits:

BURLINGTON ELECTRIC DEPARTMENT (B.E.D.)

INSURANCE REQUIREMENTS: TYPE 1 Contractor's Order

COVERAGE MINIMUM LIMIT

- a. **Comprehensive General Liability:**
Bodily Injury\$1,000,000 each claim
\$2,000,000 in aggregate
Property Damage\$1,000,000 each claim
\$2,000,000 in aggregate
- b. **Automobile Liability:**
Bodily Injury\$1,000,000 (each person)
\$1,000,000 (each occurrence)
Property Damage\$1,000,000 (each occurrence)
- (Note: A combined single limit of \$1,000,000 for bodily injury and property damage liability is acceptable.)

- c. **Workers' Compensation:**Statutory Limits

- 8.2 Contractor shall purchase and maintain such comprehensive general liability and other insurance as set forth above which will provide protection from claims arising from the result of Contractor's performance and furnishing of services outlined in the awarded Purchase Order and/or Contract, whether it is performed or furnished by Contractor or by anyone directly or indirectly employed by the

Contractor to perform or furnish any of the work outlined in the Purchase Order and/or Contract. The Contractor shall hold B.E.D. harmless for any and all claims arising out of the work performed by the Contractor.

- 8.3 Contractor shall provide B.E.D. with a certificate of insurance for coverages set forth above which shall not be subject to cancellation without at least thirty (30) days advance written notice to B.E.D. Such evidence of insurance shall be received at B.E.D. before the commencement of work, or Purchase Order and/or Contract is awarded, whichever is sooner, and such insurance shall be maintained throughout the duration of awarded contract. Forward certificate of insurance to Burlington Electric Department, 585 Pine St., Burlington, VT 05401, Attention: Insurance Analyst.
- 8.4 Any property damage or bodily injury claims in excess of limits set forth above or which are not covered by the Contractor's comprehensive general liability, automobile liability, or worker's compensation insurance are the sole responsibility of the Contractor.
- 8.5 B.E.D. and/or any affiliated or subsidiary companies shall be recognized as additional insured with respect to insurance. Coverage provided by the contractor shall be primary to any other valid and collectible insurance available with respect to B.E.D. as additional insured.

9. INDEMNIFICATION

- 9.1 Contractor shall assume all liability and shall defend, indemnify and hold harmless B.E.D., individually, against all liability or loss and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the performance of the Agreement or by conditions created thereby, or based

upon any violation of any statute, ordinance, building code or regulation and the defense of any such claims or actions.

- 9.2 VEIC shall be fully responsible for all acts and omissions of their employees, subcontractors, or other persons or organizations directly or indirectly employed by them to the same extent VEIC is responsible for their own acts and omissions hereunder.

10. MISCELLANEOUS PROVISIONS

- 10.1 No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.
- 10.2 This contract may not be assigned nor any of the rights and duties hereunder without the prior written consent of B.E.D.
- 10.3 This Agreement is governed by Vermont law and represents the entire agreement between the parties in reference to this matter and supersedes all prior communications, including any prior letters of understanding or billings thereunder.
- 10.4 Notice required herein may be given by registered or certified mail by depositing the same in the United States mail, postage prepaid, addressed to the party for whom intended at the following address:

For B.E.D.: Thomas A Buckley
 585 Pine Street
 Burlington, Vermont 05401

For VEIC: Beth Sachs
VEIC
255 South Champlain Street
Burlington, Vermont 05401

IN WITNESS WHEREOF, the parties have caused these presents to be executed by themselves or by their representative officer or representative thereto duly authorized the day and year first above written.

BURLINGTON ELECTRIC DEPARTMENT (Duly Authorized Agent)

By (Name): Thomas A. Buckley
Signature: [Signature]
Date: 4/7/04
Witness: _____

VERMONT ENERGY INVESTMENT CORPORATION (Duly Authorized Agent)

By (Name): Beth Sachs
Signature: [Signature]
Date: April 14, 2004
Witness: _____

VEIC Statewide EEU Activities and Services Benefiting BED

Items included in determining BED basis under
"Direct Non-Project-Specific Services and Initiatives Costs":

Labor and Expenses for Statewide Activities

- Market Assessment and Analysis
- Design of Core Service Offerings and Initiatives
- Program Development and Implementation Planning
- Measure Characterization
- Technical Reference Manual Maintenance and Ongoing TRM Process with DPS
- Ongoing Program Implementation Procedures with Contract Administrator and DPS
- Statewide Program Activity Documentation
- Statewide Program Administration (e.g. Market Managers)

Items included in determining BED basis under
"Allocated Management Costs":

- Labor and Expenses for General Administration (e.g., % of Managing Director time)

Items included in determining BED basis under
"Allocated Marketing/Business Development/Customer Service Costs"

- All Direct Labor associated with statewide marketing, business development and customer service.
- Other Direct Costs associated with development and production of statewide marketing and business development collateral materials, including:

Efficient Products

Includes: Instant Coupons for Lighting and Appliance Rebates (Clothes washer, refrigerators, room a/c, ceiling fans), Point of Purchase Materials, Lighting Retailer newsletter, Appliance Retailer newsletter, Regional Marketing (ads, website, special events and public relations), statewide advertising, co-op advertising.

Residential New Construction

Includes: Builder brochure, Buyer brochure, ENERGY STAR fact sheets, Builder News, other supporting printed materials, statewide advertising, co-op advertising.

Business

Includes: Cool Choice and Motor-Up Incentive Forms, Equipment Replacement and New Construction Sales Folders and their contents, Case Studies.

Other Marketing and Business Development Costs

Includes: general promotion of ENERGY STAR brand, statewide bill inserts (Note: Due to Burlington's different sized bills, EVT produces a separate design and size to accommodate this larger bill format) and Nexus EnergyGuide Vermont version CD and web-based tool.

General

BED customers are eligible for any and all energy efficiency awards provided by VEIC to participating customers such as those awarded at the annual Better Buildings by Design Conference.

Includes BED access to and direct participation in all Northeast Energy Efficiency Partnership (NEEP) initiatives in which VEIC participates as well as a pro-rated share of all brochures, case studies and other materials as provided by each NEEP initiative.

BED Share of EVT Services - Year 2004

BUSINESS ENERGY SERVICES

Existing Buildings - Retrofit

	<u>BED Cost Basis</u>	<u>Total EVT Costs 2004</u>
Direct Non-Project-Specific Services Costs	\$39,994	
Allocated Management Costs	\$6,638	
Allocated Conference Costs	\$0	
Allocated Marketing/Bus Develop/Customer Service Costs	\$46,282	
Total Estimated BED Cost Basis	\$92,915	\$1,092,097
BED % Share	6.79%	
BED Estimated Share	\$6,309	

Existing Buildings - Equipment Replacement

Direct Non-Project-Specific Services Costs	\$145,034	
Allocated Management Costs	\$24,074	
Allocated Conference Costs	\$0	
Allocated Marketing/Bus Develop/Customer Service Costs	\$173,012	
Total Estimated BED Cost Basis	\$342,120	\$2,185,599
BED % Share	6.79%	
BED Estimated Share	\$23,230	

Business New Construction

Direct Non-Project-Specific Services Costs	\$220,284	
Allocated Management Costs	\$36,564	
Allocated Conference Costs	\$13,115	
Allocated Marketing/Bus Develop/Customer Service Costs	\$254,920	
Total Estimated BED Cost Basis	\$524,883	\$2,250,275
BED % Share	6.79%	
BED Estimated Share	\$35,640	

Low Income Multifamily (retrofit and New Construction)

Direct Non-Project-Specific Services Costs	\$80,509	
Allocated Management Costs	\$13,363	
Allocated Conference Costs	\$0	
Allocated Marketing/Bus Develop/Customer Service Costs	\$20,834	
Total Estimated BED Cost Basis	\$114,705	\$1,267,650
BED % Share	6.79%	
BED Estimated Share	\$7,789	

MultiFamily Market Rate New Construction

Direct Non-Project-Specific Services Costs	\$15,957	
Allocated Management Costs	\$2,649	
Allocated Conference Costs	\$950	
Allocated Marketing/Bus Develop/Customer Service Costs	\$4,129	
Total Estimated BED Cost Basis	\$23,685	\$293,216
BED % Share	6.79%	
BED Estimated Share	\$1,608	

sub-Total BUSINESS ENERGY SERVICES

\$74,575 **\$7,088,836**

RESIDENTIAL ENERGY SERVICES

Efficient Products

Direct Non-Project-Specific Services Costs	\$596,301	
Allocated Management Costs	\$98,978	
Allocated Conference Costs	\$0	
Allocated Marketing/Bus Develop/Customer Service Costs	\$504,260	
Total Estimated BED Cost Basis	\$1,199,539	\$1,839,766
BED % Share	4.47%	
BED Estimated Share	\$53,619	

RNC Single Family

Direct Non-Project-Specific Services Costs	\$579,587	
Allocated Management Costs	\$96,203	
Allocated Conference Costs	\$34,507	
Allocated Marketing/Bus Develop/Customer Service Costs	\$262,829	
Total Estimated BED Cost Basis	\$973,126	\$1,304,007
BED % Share	2.50%	
BED Estimated Share	\$24,328	

Existing Homes - Low Income Single Family

Direct Non-Project-Specific Services Costs	\$75,642	
Allocated Management Costs	\$12,555	
Allocated Conference Costs	\$0	
Allocated Marketing/Bus Develop/Customer Service Costs	\$34,302	
Total Estimated BED Cost Basis	\$122,499	\$1,232,084
BED % Share	4.47%	
BED Estimated Share	\$5,476	

Existing Homes - non-Low Income Single Family

Direct Non-Project-Specific Services Costs	\$131,145	
Allocated Management Costs	\$21,768	
Allocated Conference Costs	\$0	
Allocated Marketing/Bus Develop/Customer Service Costs	\$59,471	
Total Estimated BED Cost Basis	\$212,385	\$1,049,717
BED % Share	4.47%	
BED Estimated Share	\$9,494	

sub-Total RESIDENTIAL ENERGY SERVICES

\$92,917 **\$5,425,574**

TOTAL BUSINESS AND RESIDENTIAL SERVICES

\$167,492 **\$12,514,410**